Morgan Lewis

Tamar E. Finn
+1.202.373.6117
Tamar.finn@morganlewis.com

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VIA ECFS

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: *Business Data Service in an Internet Protocol Environment*, WC Docket No. 16-143; *Investigation of Certain Price Cap Local Exchange Carrier Business Data Services Tariff Pricing Plans*, WC Docket No. 15-247; *Special Access for Price Cap Local Exchange Carriers*, WC Docket No. 05-25; *AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Rates for Interstate Special Access Services*, RM-10593

Notice of Ex Parte Communication

Dear Ms. Dortch:

On August 23, 2016, on behalf of U.S. TelePacific Corp. d/b/a TelePacific Communications ("TelePacific"), I spoke with Pamela Arluk, Chief of the Pricing Policy Division regarding the Pacific Bell Telephone Company ("PacBell") and Southwestern Bell Telephone Company ("SWBT") *Suspension Order*.[1]

I explained that because price flex contracts offer channel termination rates that are lower than the "lowest available Price Cap Zone 1 Channel Termination rate" used in PacBell's and SWBT's August 15, 2016 revised tariff filings, the tariffs still do not comply with the *Tariff Investigation Order* for all customers. Where a price flex customer pays a rate that is discounted below the "lowest available Price Cap Zone 1 Channel Termination rate," a shortfall or early termination penalty that assesses the higher Price Cap Zone 1 rate would "result[] in a carrier recovering more revenue from ***the*** customer than if ***the*** customer had met ***its*** minimum commitment."[2] Any shortfall or early termination penalty based on a

[1] *Pacific Bell Telephone Company Tariff F.C.C. No. 1 Transmittal No. 539; Southwestern Bell Telephone Company Tariff F.C.C. No. 73 Transmittal No. 3428*; Order, DA 16-805 (rel. July 15, 2016) *("Suspension Order").*

[2] *Investigation of Certain Price Cap Local Exchange Carrier Business Data Services Tariff Pricing Plans*, WC Docket No. 15-247, Tariff Investigation Order, 31 FCC Rcd. 4723, ¶ 135

Price Cap Zone 1 rate that is higher than the discounted price flex rate a specific customer pays would not comply with the Commission's limits on expectation damages for that specific customer.

We also discussed the fact that Frontier generally does not have pricing flexibility to offer discounted channel termination rates.

Please contact the undersigned if you have any questions.

Respectfully submitted,

/s/ Tamar E. Finn

Tamar E. Finn
Counsel for U.S. TelePacific, Corp. d/b/a TelePacific Communications

cc: Pamela Arluk (Via E-Mail)

("*Tariff Investigation Order*") (emphasis added). *See also, id.* at ¶ 152 ("a reasonable early termination fee should be set at a level no greater than the amount of revenue ***a*** customer would have paid had ***it*** met ***its*** minimum commitment") (emphasis added).